91-1832 (1)

Supreme Court, U.S.
FILED
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No. _____

Supreme Court of the United States

October Term 1991

Anton Tittjung,

Petitioner,

vs.

United States,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS OF THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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I. QUESTION PRESENTED FOR REVIEW

The Respondent, United States of America, brought an action against Anton Tittjung, Petitioner, pursuant to § 340(a) of the Immigration and Nationality Act of 1952, as amended, to revoke the United States citizenship of Petitioner, to set aside his January 9, 1974 admission to citizenship, and to cancel his Certificate of Naturalization. The United States District Court, by Decision dated December 14, 1990, granted the relief sought by the Respondent. Is that ruling and the subsequent ruling of the United States Court of Appeals for the Seventh Circuit, which affirmed the Judgment of the trial court, inconsistent with a Decision of the United States Court of Appeals for the Sixth Circuit entitled, Petkiewytsch vs. INS, 945 F.2d 871 (6th Cir. 1991)?

II. LIST OF PARTIES

The parties to the Petition are those shown on the cover.

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The Petitioner, Anton Tittjung, respectfully prays that a Writ of Certiorari be issued to review the Judgment and Opinion of the United States Court of Appeals for the Seventh Circuit entered in this proceeding on December 26, 1991, together with the Order denying the Petition for Rehearing dated January 8, 1992.

III. OPINIONS BELOW

The opinions of the Court of Appeals for the Seventh Circuit, together with the Order denying the Petition for Rehearing, are reprinted in the Appendix hereto at App. 8 and App. 10.

The Memorandum Decision of the United States District Court for the Eastern District of Wisconsin (Reynolds, D. J.) is reprinted in the Appendix hereto as App. 12.

IV. JURISDICTION

The date of the Decision of the United States Court of Appeals for the Seventh Circuit was November 15, 1991.

Petitioner's Motion for Rehearing in the United States Court of Appeals for the Seventh Circuit was denied on January 8, 1992. See App. 10.

Jurisdiction is conferred upon this Court by 28 U.S.C. § 1254(1) providing for review by this Court of cases in the Court of Appeals by Writ of Certiorari upon the petition of any party.

V. STATUTE INVOLVED

The principal statute involved is 8 U.S.C. § 1451(a) which reads as follows:

> § 1451. Revocation of naturalization
>
> (a) Concealment of material evidence; refusal to testify
>
> It shall be the duty of the United States attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any district court of the United States in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground that such order and certificate of naturalization were illegally procured or were procured by concealment of a material fact or by willful misrepresentation, and such revocation and setting aside of the order admitting such person to citizenship and such canceling of certificate of naturalization shall be effective as of the original date of the order and certificate, respectively: Provided, That refusal on the part of the naturalized citizen within a period of ten years following his

naturalization to testify as a witness in any proceeding before a congressional committee concerning his subversive activities, in a case where such person has been convicted of contempt for such refusal, shall be held to constitute a ground for revocation of such person's naturalization under this subsection as having been procured by concealment of a material fact or by willful misrepresentation. If the naturalized citizen does not reside in any judicial district in the United States at the time of bringing such suit, the proceedings may be instituted in the United States District Court for the District of Columbia or in the United States district court in the judicial district in which such person last had his residence.

VI. STATEMENT OF THE CASE

A. District Court Jurisdiction.

Subject matter jurisdiction in the District Court was based upon 28 U.S.C. § 1345; 8 U.S.C. § 1421(a); 8 U.S.C. § 1451(a).

B. Proceedings Below.

This action was commenced by the United States of America on September 1, 1989 alleging, among other things, that the Petitioner served as an armed guard at a Nazi concentration camp and that because of this service he was excludable from the United States and therefore procured his citizenship illegally. On December 14, 1990, by Decision and Order, the District Court granted judgment in favor of the United States. The Petitioner then appealed to the United States Court of Appeals for the Seventh Circuit. That Court, on November 15,

1991, affirmed the Judgment of the District Court.

Thereafter, Petitioner petitioned the Court of Appeals for a rehearing which was denied by Order dated January 8, 1992.

C. Statement of Facts.

The statement of facts as set forth by the District Court in its Order of December 14, 1990 may be considered by the Court as the statement of the Petitioner for purposes of this Petition except insofar as it finds Petitioner to have been an "armed guard."

D. Reasons for Allowing the Writ.

The Decision of the Court of Appeals for the Seventh Circuit is in the opinion of the Petitioner inconsistent with the Decision of the Sixth Circuit Court of Appeals in Petkiewytsch v. INS, 945 F.2d 871 (6th Cir. 1991). The Petkiewytsch Decision interpreted the Decision of this Court in its Decision in

Fedorenko v. United States, 449 U.S. 490 (1981). Petkiewytsch held

> the Supreme Court held that Fedorenko's involuntary service as an armed guard at Treblinka disqualified him as a matter of law from admission to the United States under the Displaced Persons Act.

As pointed out by the Court, the "linedrawing" in cases under the Holtzman Amendment has been particularly difficult and has produced conflicting results. In discussing rulings of the Seventh Circuit Court of Appeals, the Petkiewytsch court pointed out that the Seventh Circuit had specifically rejected the argument that an individual must have actively or personally participated in persecution to be deportable under the Holtzman Amendment. The Ninth Circuit in Laipenieks v. INS, 750 F.2d 1427 (9th Cir. 1985), said deportability under § 1251(a)(19)

> may only be sustained where the evidence establishes that the individual in question personally ordered, incited, assisted, or

> otherwise participated in the persecution of individuals.

The Ninth Circuit relied on note 34 of the Fedorenko Decision in concluding that a proper analysis under Holtzman is "whether there was proof of personal, active assistance or participation in persecutorial acts." The Sixth Circuit then points out its view of the legislative history of the Holtzman Amendment. It is difficult to point out the rationale of the Seventh Circuit in this matter in view of the fact that it merely issued an Order affirming the Judgment of the District Court. That requires an analysis of the Opinion of the District Court. It is clear from that Opinion that there is no evidence of any conduct of the Petitioner at the camps. The principal evidence is based upon a guard roster, and there is no testimony whatsoever, nor is

there any finding, that anyone ever observed Petitioner at any camp or in fact as a guard.

The conflict between the Courts of Appeals for the Sixth Circuit and the Seventh Circuit is clear. The Sixth Circuit held, in effect, that there must be evidence of personal conduct under Fedorenko to warrant deportability. The Seventh Circuit in affirming the trial court in this case let stand its previous interpretations of Fedorenko. Those Decisions in United States v. Schmidt, 923 F.2d 1253 (7th Cir. 1991); United States v. Schellong, 717 F.2d 329 (7th Cir. 1983); United States v. Kairys, 782 F.2d 1374 (7th Cir. 1986); and Kulle v. INS, 825 F.2d 1188 (7th Cir. 1987) require no evidence of actual participation.

The differences in the Circuits are so substantial that it requires the interpretation by this Court so that the citizens in this country are treated fairly

and not on the happenstance of which Circuit they reside in.

VII. CONCLUSION

We respectfully request that this Court grant a Writ of Certiorari in this matter for the reasons set forth above.

Dated this 16th day of April, 1992.

Respectfully submitted,

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Attorney for Petitioner,
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No. _____

Supreme Court of the United States

October Term 1991

Anton Tittjung,

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vs.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS OF THE SEVENTH CIRCUIT

APPENDIX FOR WRIT OF CERTIORARI

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UNITED STATES COURT OF APPEALS

For the Seventh Circuit
Chicago, Illinois 60604

JUDGMENT-WITHOUT ORAL ARGUMENT

Date: November 15, 1991

BEFORE: Honorable Walter J. Cummings,
Circuit Judge

Honorable Richard D. Cudahy,
Circuit Judge

Honorable Michael S. Kanne,
Circuit Judge

No. 91-1352

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ANTON TITTJUNG,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Wisconsin
No. 89 C 1068, Judge John W. Reynolds

This cause came before the Court for decision on the record from the above mentioned district court.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the judgment of the District Court in this cause appealed

from be, and the same is hereby, AFFIRMED, with costs, in accordance with the order of this Court entered this date.

UNITED STATES COURT OF APPEALS

For the Seventh Circuit
Chicago, Illinois 60604

DATE: January 8, 1992

BEFORE: Honorable Walter J. Cummings,
Circuit Judge

Honorable Richard D. Cudahy,
Circuit Judge

Honorable Michael S. Kanne,
Circuit Judge

No. 91-1352

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ANTON TITTJUNG,

Defendant-Appellant.

Appeal from the United States District Court for the Eastern District of Wisconsin. No. 89 C 1068, John W. Reynolds, Senior Judge.

ORDER

On consideration of the petition for rehearing filed in the above-entitled cause, all of the judges on the original panel have voted to deny a rehearing. Accordingly,

IT IS ORDERED that the aforesaid petition for rehearing be, and the same is hereby, DENIED.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v. Civil Action
No. 89-C-1068

ANTON TITTJUNG,

Defendant.

DECISION AND ORDER

I. BACKGROUND

On September 1, 1989, plaintiff, United States of America ("the Government"), brought this action pursuant to Section 340(a) of the Immigration and Nationality Act of 1952, as amended ("INA"), 8 U.S.C. § 1451(a), to revoke the United States citizenship of defendant Anton Tittjung ("Tittjung"), to set aside the January 9, 1974 order of the this court admitting Tittjung to citizenship, and to cancel Tittjung's Certificate of Naturalization, No. 9785345, issued pursuant to that order. As the basis for its

complaint, the Government alleges that Tittjung served as an armed concentration camp guard and therefore procured his citizenship illegally.

On August 16, 1990, the Government filed a motion for summary judgment. This court denied the Government's motion for summary judgment on October 29, 1990, because material issues of fact remained in dispute. Subsequently, this court held a trial on this matter, which commenced on October 31, 1990, and concluded on November 2, 1990. During the trial, this court heard live witness testimony and received various Government exhibits regarding the nature of concentration camps and the role of armed prison guards in such camps. This court also received, and heard testimony authenticating, Government exhibits establishing that Tittjung had served in the Waffen-SS as an armed concentration camp guard. At trial, Tittjung offered no evidence or testimony to

the contrary. On the basis of the trial, this court concludes that Tittjung did serve as an armed concentration camp guard and therefore holds that Tittjung's citizenship must be revoked and his Certificate of Naturalization canceled as a matter of law.

II. JURISDICTION

The following statutes grant this court jurisdiction over this matter: (1) 28 U.S.C. § 1345 (except as otherwise provided, the United States district courts shall have original jurisdiction of all civil actions commenced by the United States); (2) 8 U.S.C. § 1421(a) (jurisdiction to naturalize persons as citizens is conferred on United States district courts); and (3) 8 U.S.C. § 1451(a) (action to revoke citizenship to be brought in any court specified in 8 U.S.C. § 1421(a)).

Venue is proper in this district under 8 U.S.C. § 1451(a), which permits an action to revoke citizenship to be brought in the

judicial district in which the naturalized citizen resides at the time of bringing suit.

III. FINDINGS OF FACT

A. Defendant Tittjung's Background.

Tittjung was born on November 17, 1924, in Erdud[1], Yugoslavia (Exh. 1 at 2, 4, 9, 21, 23, 27, and 35; Exh. 10 at 4; Exh. 12). From birth until 1933, Tittjung lived in Erdud where he attended primary school (Exh. 12). Between 1933 and 1937, Tittjung attended secondary school in Belgrade, Yugoslavia (Id.). Thereafter, Tittjung returned to Erdud where he resided until 1942 (Id.; Exh. 1 at 5).

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[1] The name of this town appears in some documents as "Erdut," rather than "Erdud."

B. Defendant Tittjung's Service as an SS Guard.

Tittjung joined[2] the Waffen-SS in October 1942 and remained in the Waffen-SS until the conclusion of the war in 1945 (Exh. 1 at 5; Exh. 12 at 3). Tittjung was a member of the Totenkopf-Sturmbann.[3] (Exh. 14 at 1, entry 100). Tittjung wore that organization's symbol, a skull and

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[2] Mr. Tittjung told the Displaced Persons Commission that he had been conscripted into the Waffen-SS in October 1942 (Ex. 1 at 5). According to the documentary evidence and trial testimony, however, the SS had not yet reached an agreement with the government of Croatia on the conscription of ethnic Germans as of that date (Testimony of Sydnor). Such evidence provides strong support for the Government's position that Tittjung voluntarily joined the Waffen-SS. However, as this opinion discusses infra, the voluntariness of Defendant's service as an armed concentration camp guard is legally irrelevant; all such guards are deemed to have procured their visas illegally. Fedorenko v. United States, 449 U.S. 490, 510-11, 514 (1981).

[3] The English translation of "Totenkopf-Sturmbann" is "Death's Head Battalion."

crossbones, on the collar of his uniform (Testimony of historian Charles Sydnor, Jr.). While a member of the Totenkopf-Sturmbann, Tittjung served as a guard at the Mauthausen Concentration Camp and its subcamp Gross Raming (Testimony of Sydnor; Exh. 14, entry 100).

Tittjung's service as an armed guard is clearly and convincingly documented by an SS-prepared roster dated July 26, 1944. The roster indicates that an Anton Tittjung was a member of the 5th Company of SS Death's Head Battalion headquartered at Mauthausen who was stationed at Gross Raming (Testimony of Sydnor; Exh. 14). The roster specifically lists the names, dates of birth, and next-of-kin addresses for the guards at Mauthausen and its subcamps. Entry 100 of the roster bears the following information: the name "Anton Tittjung," the rank "lance corporal," the date of birth "17 November 1924," and the address "Parents: in Erdud, Croatia." This

guard roster was seized at Mauthausen on May 6, 1945, by Major Eugene Cohen of the U.S. Army during his official investigation of war crimes committed at Mauthausen and its subcamps (Testimony of Sydnor; Exh. 15). This roster, as well as other similar rosters, are contained in the report of Major Cohen's investigation ("Cohen Report"), portions of which subsequently were admitted into evidence at Nurnberg as Exhibit USA 249 (Testimony of Sydnor; Exh. 15). In the unrebutted opinion of Dr. Charles Sydnor, Jr., a respected historian who has written extensively on the history of Nazi concentration camps, the roster is authentic and lists only guards at the Gross Raming subcamp.

C. The Nature of Guard Service at Mauthausen and Gross Raming.

The Totenkopf-Sturmbann was a distinct organization within the Waffen-SS which was responsible for the operation of the

Mauthausen camp complex, including its subcamp at Gross Raming, which were concentration camps established and operated by Nazi Germany in Nazi-occupied Austria (Testimony of Sydnor; Exhs. 14 & 15). All guards of prisoners in the Mauthausen concentration camp system were members of the Totenkopf-Sturmbann (Testimony of Sydnor; Exh. 15).

Guards at concentration camps such as Mauthausen and Gross Raming performed various duties, including guarding prisoners to ensure that they performed forced labor and that they did not escape from the labor site; guarding prisoners on forced marches from the main camp to subcamps; and guarding prisoners from the camp perimeter and its watchtowers to ensure that they did not escape (Testimony of Sydnor; Testimony of Zivadin Ljubisavljevic, a former prisoner at Mauthausen and Gross Raming). The guards were armed with rifles or submachine guns

while performing their guard duty, and they were under orders to shoot at any prisoner attempting to escape (Testimony of Sydnor; Exhs. 54 & 55).

While performing such guard duties, members of the Totenkopt-Sturmbann ordered, incited, assisted, and generally participated in the persecution of prisoners because of their race, religion, national origin, or political opinion (Testimony of Sydnor). This persecution included, but was not limited to forcible confinement, slave labor, deprivation, physical and emotional abuse, torture, and exterminations (Testimony of Sydnor and Ljubisavljevic).

During the period from 1943 to 1945, persons were imprisoned at the Mauthausen camp complex because of their race, religion, national origin, or political opinion, and from approximately January 1943 until August 1944, persons were imprisoned at the Gross Raming subcamp for the same reasons

(Testimony of Sydnor). Among the prisoners incarcerated at Mauthausen and Gross Raming were: Jews, Russian, British, and American prisoners of war; and political opponents of the Nazis, including citizens of Yugoslavia, Poland, the Soviet Union, Spain and many other European countries (Id.) Some prisoners at Mauthausen and its subcamps wore symbols corresponding to the racial, religious, or national origin reasons for their imprisonment, in addition to symbols corresponding to their country of origin (Testimony of Sydnor and Ljubisavljevic). Mauthausen and Gross Raming were concentration camps, the operation of which was entrusted exclusively to the Totenkopf-Sturmbann Company to which Tittjung belonged.

During the period of Tittjung's service, the death toll at Mauthausen ranged from 200 to 300 per day in 1943, and from 350 to 400 per day in 1944 (Testimony of Sydnor). In all, thousands of prisoners died in

Mauthausen as the result of shooting, gassing, handing, electrocution, starvation, forced labor, lethal injection, and other forms of killing (Id.). At Gross Raming alone, at least 185 prisoners were killed during the period of Tittjung's service (Id.).

D. Defendant Tittjung's Efforts to Obtain Admission to and Residence in the United States.

Following World War II, Tittjung resided in Austria for several years. Then, Tittjung applied for entry as a permanent resident pursuant to the Displaced Persons Act of 1948 ("DPA"), Pub. L. No. 87-774, 62 Stat. 1009, amended by Pub. L. No. 81-555, 64 Stat. 219 (1950). The purpose of the DPA was to enable European refugees driven from their homelands by the war to immigrate to the United States without regard to traditional immigration quotas. Fedorenko v. United States, 449 U.S. 490, 495 (1981). The Act specifically

excluded from the category of "displaced persons" individuals who had "assisted the enemy in persecuting civil[ians]." Id.; § 2(b), 62 Stat. 1009. The DPA also established an elaborate system of interviews for determining eligibility for displaced person status. At no point in this interview process did Tittjung disclose to United States officials that he had served as a concentration camp guard or been a member of the Totenkopf-Sturmbann.

First, on February 6, 1952, during the course of his visa application, Tittjung completed, signed, and swore to a mandatory "Fragebogen" or questionnaire in which he omitted any reference to his service in the Totenkopf-Sturmbann (Exh. 10 at 17). In describing his military service, Tittjung reported only that he had been a member of the Prinz Eugen Division of the Waffen-SS

between 1942 and 1945.[4] By disclosing only has membership in the Prinz Eugen Division, Tittjung either wilfully or inadvertently concealed both his disqualifying membership in the Totenkopf-Sturmbann as well as his service as a concentration camp guard, each of which were grounds for immigration ineligibility.

Next, on March 25, 1952, Tittjung sought a determination from the United States Displaced Persons Commission ("DPC") that he was a "displaced person" as defined in the DPA and therefore eligible to immigrate to the United States. In seeking this determination, Tittjung represented to the U.S. Army Counter Intelligence Corps ("CIC") that he became a member of the Waffen-SS Prinz Eugen Division in 1942, received four

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[4] At the time of the completion of the defendant's Fragebogen, rank and file members of the Prinz Eugen Division were deemed eligible for entry into the United States.

months infantry and artillery training, fought against the Tito partisans in Yugoslavia between February 1943 and Fall 1944, and then retreated to the Austria-Yugoslavia border, arriving there in May 1945 (Exh. 10 at 4). Again, Tittjung did not disclose his service in the Totenkopf-Sturmbann at Gross Raming. In considering Tittjung's status as a displaced person, the DPC noted the CIC's screening report which concluded that "nothing therein . . . warrant[s] applicant's exclusion from the United States." (Exh. 1 at 5). Relying in part on the CIC report, the DPC certified Tittjung as a displaced person on April 9, 1952 (Exh. 1 at 4-6).

On April 10, 1952, Tittjung again omitted these facts in swearing to his permanent residence visa application at Salzburg, Austria (Exh. 1 at 35). On the visa application, Tittjung responded to questions about his date and place of birth

and his places of previous residence by reporting only that he was born on November 17, 1924, at Erdud, Yugoslavia, and that his place of residence from 1942-1945 had been the "German Army" (Id.). Tittjung did not disclose any more particular information regarding his membership in the Totenkopf-Sturmbann, his residence at Gross Raming, or the nature of his military duties at Gross Raming (See Id.).

On April 16, 1952, Tittjung executed an Affidavit as to Subversive Organizations and Movements (Form I-144), in which he swore under oath that he had "never . . . assisted in the persecution of any person because of race, religion, or national origin." (Exh. 1 at 29-30). Tittjung again omitted reference to his guard service, but it is unclear whether any government agent ever informed Tittjung that his service as an armed camp guard prevented his from taking this oath.

Finally, on August 19, 1955, upon reentering the United States as a nonquota immigrant under the Immigration and Nationality Act after a trip to Europe with an expired reentry permit, Tittjung swore to another visa application, on which he described his place of residence from 1942 to 1945 only as "German soldier in Yugoslavia."

Thus, Tittjung failed to disclose his guard service and membership in the Totenkopf-Sturmbann on each occasion when he sought permanent residence in the United States.

E. Defendant Tittjung's Efforts to Obtain United States Citizenship.

On November 2, 1973, Tittjung filed with the Immigration and Naturalization Service ("INS") an "Application to File Petition for Naturalization" and a "Statement of Facts for Preparation of Petition," which together comprised INS Form N-400 (Exh. 1 at 12 et seq.). Tittjung responded to Question 7 on

Form N-400, which asked the applicant to list every "organization, association, . . . or similar group, and [his] foreign military service," by listing only the "German Army" (Id.). Thus, Tittjung never informed any United States official of his service as an armed guard at Gross Raming during the naturalization process. It has not been established, however, that Tittjung was asked directly during the naturalization process about whether he had performed concentration camp guard service.

On November 28, 1973, Tittjung filed with this court his petition for naturalization. On January 9, 1974, this court granted Tittjung's Petition for Naturalization and issued to him Certificate of Naturalization No. 9785345.

IV. ARGUMENTS OF THE PARTIES

The Government claims that Tittjung served as an armed guard in a Nazi concentration camp and later misrepresented

and concealed this service (1) when applying for a visa to enter the United States under the DPA, (2) when applying for a visa to reenter the United States under the Immigration and Nationality Act of 1952, and (3) when applying for naturalization. The complaint alleges that Tittjung should be denaturalized because of (1) his service in the Mauthausen system, (2) his subsequent misrepresentation and concealment of that service, and (3) his repeated false testimony for the purpose of gaining naturalization.

The Government has sought to establish Tittjung's concentration camp service on the basis of the Gross Raming guard roster and upon the drawing of adverse inferences based upon Tittjung's failure to offer any rebuttal testimony.

Tittjung responds that the Government has failed to establish sufficiently that he served as a concentration camp guard. Specifically, Tittjung argues that the

Government has (1) not sufficiently authenticated the concentration camp guard roster bearing defendant's name, (2) offered no eyewitness testimony to establish that Tittjung served as an armed guard, and (3) not met its burden of proof in relying upon opinion testimony regarding the nature of guard service at the Mauthausen and Gross Raming camps.

V. ANALYSIS

A. Standard of Determination

In this denaturalization action, the Government bears a heavy burden. It must prove its case by clear, unequivocal, and convincing evidence. Schneiderman v. United States, 320 U.S. 118, 125 (1943); Fedorenko v. United States, 449 U.S. 490, 505-506 (1981).

B. Defendant Tittjung's Eligibility for a Visa Under the DPA

This court finds, based upon documentary and supporting testimonial evidence, that

Tittjung did serve as a guard at the Mauthausen concentration camp complex, and was therefore ineligible for a visa under the DPA. Tittjung has not contradicted the Government's evidence of his guard service, nor has he challenged the Government's argument that armed concentration camp guards were ineligible for visas.

1. The Evidence Convincingly Establishes Tittjung's Guard Service.

The Gross Raming guard roster bearing Tittjung's name clearly and convincingly establishes that Tittjung did in fact serve as an armed concentration camp guard. This court finds that the roster list refers to the defendant Tittjung and is reliable for several reasons. First, the "Anton Tittjung" entry on the roster bears the same date of birth and hometown that Tittjung listed on his visa application and on other documents (Exhs. 1, 10, & 14). Second, in the opinion

of an expert historian familiar with concentration camp documents, the roster appears similar in content and style to other rosters then in use in the Mauthausen camp system (Testimony of Sydnor; Exhs. 14 & 15). Third, the markings at the bottom of the roster (noting that an entry number had been repeated) reveal that the roster was proofread for accuracy before being signed by the SS company commander on July 17, 1944 (Testimony of Sydnor; Exh. 14). Fourth, the fact that the "Cohen Report" notes that correction at the bottom of the roster establishes that the roster was seized at Mauthausen by U.S. Army investigators in early May 1945 (Exhs. 14 & 15). Finally, extrinsic documents, including U.S. military trial records and statements as well as the Mauthausen records of prisoner deaths, corroborate that as many as ten of the other guards named on the roster were in fact stationed as guards at Gross Raming around

the date indicated on the roster (Testimony of Sydnor; Exhs. 14, & 73-77). Hence, the Gross Raming guard roster is authentic and convincingly establishes that Tittjung was a concentration camp guard.

2. Defendant Tittjung's Ineligibility for Visa and Citizenship

A certificate of naturalization must be revoked if it was illegally procured. 8 U.S.C. § 1451(a); Fedorenko v. United States, 449 U.S. 490, 515 (1981). Naturalization is illegally procured if a naturalized citizen has failed to comply with the statutory prerequisites for naturalization. 449 U.S. at 515. Lawful admission into this country with a valid immigration visa, is a statutory requirement for naturalization. See 8 U.S.C. § 1427(a)(1). The amended DPA, however, "made all those who assisted in the persecution ineligible for visas." 449 U.S.

512 (footnote omitted."[5] Therefore, the Supreme Court established in Fedorenko that all concentration camp guards were ineligible as a matter of law for visas because they had assisted in the type of persecution proscribed by the DPA. 449 U.S. at 513-16.

In Fedorenko, the facts before the Court established that Fedorenko had served as a perimeter guard at the Treblinka concentration camp, but did not establish any specific actions committed by Fedorenko against prisoners. The Court held that an "individual's service as a concentration camp armed guard--whether voluntary or involuntary--made him ineligible for a visa." 449 U.S. at 512 In reaching this decision, the Court found that there was "no room for

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[5] In 1990, Congress amended Section 13 of the DPA so as to deny explicitly displaced person status, and thus visa eligibility, to applicants who had assisted Nazi Germany in persecuting civil populations of countries. 64 Stat. 219, 227 (June 16, 1951).

doubt that if petitioner had disclosed the fact that he had been an armed guard at Treblinka, he would have been found ineligible for a visa under the DPA." Id. at 513.

This court is bound to reach the same conclusion that the Supreme Court reached in Fedorenko. Prisoners were persecuted and killed because of race, religion, or national origin at Gross Raming (Testimony of Sydnor), as at Treblinka. See 449 U.S. at 512-13 n.34. In addition, guards at Gross Raming were issued uniforms, armed with guns, and paid a stipend (Testimony of Sydnor) as were guards at Treblinka. See 449 U.S. at 512-13 n.34. Hence, like Fedorenko, this case does not involve "difficult line-drawing problems" regarding the nature of Tittjung's wartime service. Id. Moreover, the testimony of officials who processed Tittjung's visa application under the DPA establish unequivocally that if Tittjung had in fact

disclosed that he had been a guard at Gross Raming, he would not have been granted a visa under the DPA (Testimony of Schneider, Ziemack, Bishop, and Gerstl).

This court finds that Tittjung was an armed guard at a Nazi concentration camp, and therefore concludes that he failed to obtain a valid visa, which is a statutory prerequisite to naturalization. 8 U.S.C. § 1427(a); Fedorenko, 449 U.S. at 514-15; United States v. Kairys, 782 F.2d 1374, 1377 n.3 (7th Cir. 1989), cert. denied, 476 U.S. 1153 (1986). Consequently, Tittjung's subsequent naturalization was illegally procured. Fedorenko, 449 U.S. at 512-15; Kairys, 782 F.2d at 1377 n.3. This conclusion is not affected by the voluntariness of Tittjung's service, 449 U.S. at 512-13, or the lack of eyewitness testimony showing Tittjung's individual involvement in persecution, 449 U.S. at 510 n.32, 512, 513.

This court has found that Tittjung was ineligible for a visa as a matter of law. Therefore, it need not address the Government's additional claims based upon Tittjung's alleged misrepresentations in procuring his visa and in obtaining naturalization.

IT IS THEREFORE ORDERED that the United States citizenship of Anton Tittjung is REVOKED;

IT IS FURTHER ORDERED that the January 9, 1974 order of this court admitting Anton Tittjung to citizenship is SET ASIDE;

IT IS FURTHER ORDERED that Anton Tittjung's Certificate of Naturalization, No. 9785345, is CANCELED.

Dated at Milwaukee, Wisconsin this 14th day of December, 1990.

BY THE COURT

/s/ John W. Reynolds
Senior Judge